

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

JASON CUNNINGHAM,

Defendant-Appellant.

CASE NO. 2026-P-0015

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2022 CR 00744

OPINION AND JUDGMENT ENTRY

Decided: October 13, 2026

Judgment: Affirmed

Connie J. Lewandowski, Portage County Prosecutor, and *Timothy P. Bogner*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Cecily J. Mullins, Megargel, Eskridge, & Mullins, L.L.P., 231 South Chestnut Street, Ravenna, OH 44266 (For Defendant-Appellant).

SCOTT LYNCH, J.

{¶1} Defendant-appellant, Jason Cunningham, appeals from the judgment of the Portage County Court of Common Pleas, sentencing him to an aggregate prison term of two years for Nonsupport of Dependents. For the following reasons, we affirm the judgment of the lower court.

{¶2} On June 28, 2022, the Portage County Grand Jury indicted Cunningham for three counts of Nonsupport of Dependents, felonies of the fifth degree, in violation of R.C. 2919.21. Cunningham entered guilty pleas to the offenses on February 4, 2025. The convictions related to Cunningham's failure to pay child support.

{¶3} At the March 31, 2025 sentencing hearing, Cunningham indicated that he had paid support in the past, became ill, had been unable to work, but intended to return to work. The court ordered Cunningham to serve a two-year term of community control.

{¶4} On December 4, 2025, the probation department filed a motion to revoke, contending that Cunningham had failed to obtain a substance abuse evaluation, reply to communications from the probation department or report to his probation officer, and make payments toward child support. Further, it alleged that his “whereabouts are unknown and [he] is considered an absconder.”

{¶5} The trial court held a hearing on the motion to revoke on February 17, 2026. Cunningham admitted to the violation. The child’s mother indicated that Cunningham had never paid child support and it took her five years to get a DNA test because he left the state immediately when she became pregnant. She explained that the child is “going to college” and the mother has “a job to pay her tuition just for her to be able to go to school.”

{¶6} Defense counsel stated that Cunningham had recent health problems preventing him from working and lost his home and phone, which prevented him from contacting the probation department. He indicated Cunningham believed he would receive an inheritance soon and pay the support owed. Cunningham stated that he had paid support in the past, although he admitted he fell short due to financial issues. He indicated he had paid around \$5,000 to \$7,000, which the child’s mother refuted. The court observed support records showed he paid \$20 in the months of February, August, and December 2021 and \$189 in April 2021. It ordered him to serve 12 months in prison on each felony count, two to be served consecutively and one concurrently, for a total term of two years in prison.

{¶7} Cunningham timely appeals and raises the following assignments of error:

{¶8} “[1.] The trial court erred in sentencing appellant to consecutive sentences where the record did not support consecutive sentences and was contrary to law.”

{¶9} “[2.] The trial court’s sentence was contrary to law because it failed to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors in R.C. 2929.12.”

{¶10} In his first assignment of error, Cunningham argues that his sentence is contrary to law “because the trial court failed to make meaningful findings supporting consecutive sentences under R.C. 2929.14(C)(4) and the record does not clearly and convincingly support those findings.”

Standard for Review of Felony Sentences

{¶11} “The court hearing an appeal [of a felony sentence] shall review the record, including the findings underlying the sentence.” R.C. 2953.08(G)(2). “The appellate court may increase, reduce, or otherwise modify a sentence that is appealed under this section or may vacate the sentence and remand the matter to the sentencing court for resentencing . . . if it clearly and convincingly finds . . . [t]hat the record does not support the sentencing court’s findings under division . . . (C)(4) of section 2929.14 . . . [or] [t]hat the sentence is otherwise contrary to law.” *Id.*; *State v. Marcum*, 2016-Ohio-1002, ¶ 1.

Trial Court Made Required Consecutive Sentence Findings

{¶12} A trial court may order consecutive terms if it finds it is “necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender’s conduct and to the danger the offender poses to the public,” and finds any of the R.C. 2929.14(C)(4)(a)-(c) factors are present. R.C. 2929.14(C)(4). Here, the trial court found (C)(4)(b) to be present: “At least two of the multiple offenses were committed as part of one or more courses of conduct, and

the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct." In ordering consecutive sentences, the trial court is required to make the R.C. 2929.14(C)(4) findings "at the sentencing hearing and incorporate its findings into its sentencing entry." (Citation omitted.) *State v. Elliott*, 2023-Ohio-412, ¶ 9 (11th Dist.).

{¶13} There is no question that the court met the statutory requirement to make the R.C. 2929.14(C)(4) findings. It found that consecutive sentences were necessary to protect the public or punish the offender and were not disproportionate to the seriousness of the conduct and to the danger he poses to the public, as well as a R.C. 2929.14(C)(4)(b) finding and stated these findings both at the sentencing hearing and in its entry. To the extent that Cunningham argues the trial court "failed to make meaningful findings supporting consecutive sentences," a court "has no obligation to state reasons to support its [consecutive sentencing] findings." *State v. Hall*, 2025-Ohio-5281, ¶ 15 (11th Dist.), citing *State v. Bonnell*, 2014-Ohio-3177, ¶ 37; *State v. White*, 2026-Ohio-2253, ¶ 24 (11th Dist.). It was not required to explain its findings in detail or describe how they tie to the facts of the case as Cunningham contends.

Consecutive Sentence Findings Supported By the Record

{¶14} Cunningham also argues that the court's findings were not supported by the record. In conducting its "limited" review under R.C. 2953.08(G)(2)(a), this court "must examine the evidence in the record that supports the trial court's [R.C. 2929.14(C)(4)] findings" and vacate the sentence only if it clearly and convincingly finds that the evidence does not support those findings. *State v. Glover*, 2024-Ohio-5195, ¶ 45.

{¶15} Cunningham argues that the subject offenses and his limited criminal history

did not support findings that he posed a danger of harm to the community or public safety, noting that the trial court did not cite a history of violence, weapons offenses, or threats. However, courts have not required the existence of a violent offense to satisfy the protection of the public element of the consecutive sentencing factors. *State v. Oliver*, 2021-Ohio-2543, ¶ 82 (12th Dist.) (finding the defendant posed a danger to the public where he gained elderly victims' trust and stole money over an extended period of time); *State v. Lee*, 2020-Ohio-3580, ¶ 52-54 (7th Dist.) (rejecting the argument that consecutive sentences were inappropriate for the offense of theft by a fiscal officer); *State v. Wilson*, 2025-Ohio-1985, ¶ 12-14 (5th Dist.) (upholding consecutive sentences for violation of a protection order).

{¶16} We recognize that there is somewhat contrasting authority relating to the imposition of consecutive sentences in nonsupport cases, often dependent upon slight factual differences. Several districts have upheld consecutive sentences for nonsupport convictions in circumstances similar to the present case. In *State v. Harris*, 2003-Ohio-4555 (4th Dist.), the appellate court held that consecutive sentences for nonsupport convictions were supported by the record where the trial court found that the sentences were necessary to protect the public given the defendant's prior convictions for crimes including assault and domestic violence and the victim had an interest in seeing support paid but there was little chance the defendant would pay. *Id.* at ¶ 17. It also found the record supported the conclusion that a single term would not adequately reflect the seriousness of the offenses because the defendant ignored attempts by the court to persuade him to pay, he was unemployed, and there was an "outrageous arrearage of \$41,860.81." *Id.* at ¶ 18.

{¶17} In *State v. Smith*, 2002-Ohio-3878, ¶ 5 (12th Dist.), the appellate court upheld consecutive sentences for nonsupport offenses where the defendant had a criminal history, failed to respond to community control, and consistently failed to support his children and

meet court-imposed obligations. See also *State v. Torre*, 2004-Ohio-2126, ¶ 13-14 (9th Dist.) (consecutive sentences were supported by the record where the trial court concluded the harm was “great” since the children were deprived of \$4,500 a year, precluding them from receiving basic necessities, and the defendant made it difficult to locate him); *State v. Devoe*, 2019-Ohio-3960, ¶ 27-30 (7th Dist.) (the appellate court found the consecutive sentencing findings were supported by the record where defendant had multiple children for which he failed to pay support and had failed to appear before the court).

{¶18} In contrast, Cunningham cites *State v. Wiley*, 2020-Ohio-5428 (8th Dist.), for his argument that owing substantial child support alone could not “establish the type of danger to the public contemplated by the consecutive sentencing statute.” In *Wiley*, the defendant was in similar circumstances as Cunningham: he was convicted of multiple counts of nonsupport, placed on community control, and failed to comply with the terms of community control including paying his arrearages (although he made some payments), and was ordered to serve consecutive prison terms. The appellate court found that although the trial court determined consecutive sentences were necessary to protect the public from future crime based on his history of criminal conduct, there was no presentence investigation report to support such a finding. *Id.* at ¶ 45. It further held that the record did not support a finding that the offenses caused great or unusual harm warranting multiple terms, noting the offender’s age and health condition, as well as his lack of a criminal record. *Id.* at ¶ 46. See also *State v. McClain*, 2009-Ohio-64, ¶ 14 (2d Dist.) (finding that the defendant did not have a history of criminal conduct to support a need to protect the public and there was no indication that one prison term would not adequately reflect the seriousness of his conduct and the trial court “wanted to send a message to McClain for his lack of attention to looking for employment”).

{¶19} Under the facts of this matter, we find the case law affirming consecutive sentences to be persuasive. Like in *Harris*, Cunningham owed a substantial amount of support and repeatedly failed to pay, including after he had been placed on community control. Further, he has a record of criminal activity, outlined in the PSI, which includes a conviction for Domestic Violence, serving a jail term for Offenses Involving Underage Persons, as well as 2023 charges for Theft and Trafficking Stolen Property, which resulted in entering a plea to a reduced charge. A history of noncompliance with court orders, failure to support his child in a meaningful way over the course of many years, and a criminal record support a finding that sentences were needed to protect the public. *Wiley's* holding that consecutive sentences were unwarranted because there was no demonstration of the defendant's criminal history does not apply here because 1) unlike in *Wiley*, a PSI demonstrated Cunningham's criminal record and 2) the court in the present matter based its consecutive sentences on R.C. 2929.14(C)(4)(b) rather than section (c).

{¶20} As to the R.C. 2929.14(C)(4)(b) finding that the offenses were part of a course of conduct that caused great or unusual harm, testimony demonstrated that Cunningham failed to pay any substantial support throughout his child's entire life. The mother refuted his assertion that he paid even \$5,000 in total support and the court reviewed records that showed support of only a few hundred dollars. The mother indicated she worked a job to pay the child's college tuition. This indicates harm to the child as well as the mother. Cunningham argues that the financial harm resulting from failure to pay support is not the type of great or unusual harm contemplated by the consecutive sentencing statutes. However, financial harm will always be the form of harm in a nonpayment of support case. This case involved a significant and repeated failure to pay support, which continued after the court ordered Cunningham to pay support in its March 31, 2025 sentencing entry. See

Torre, 2004-Ohio-2126, at ¶ 13-14 (9th Dist.) (upholding consecutive sentences where the trial court found “great” harm in the deprivation of \$4,500 a year to his child). We observe that *Wiley* found there was no great harm where the defendant owed significant support but was 63, in poor health, had no criminal history of note apart from driving under suspension, and the trial court considered its ability to carry out the law to be pertinent to protecting the public, which was not the intention of R.C. 2929.14(C). While we recognize similarities between this case and *Wiley*, we also note that Cunningham did have multiple criminal offenses including domestic violence and a theft-related crime. Further, while he had health concerns, the facts demonstrate these arose in 2024, with Cunningham indicating he had never had health problems prior to that time, and do not explain his failure to pay support during the years for which he was indicted, 2016 through 2022. Based on the foregoing, we find the record supports the consecutive sentencing findings.

{¶21} The first assignment of error is without merit.

{¶22} In his second assignment of error, Cunningham argues that the trial court “failed to evaluate whether prison constituted the minimum sanction necessary to fulfill the purposes of felony sentencing under R.C. 2929.11” and disregarded the R.C. 2929.12 seriousness and recidivism factors.

Consideration of R.C. 2929.11 and .12 Sentencing Factors

{¶23} “[A] sentence is contrary to law . . . if the trial court fails to consider the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the sentencing factors set forth in R.C. 2929.12.” (Citations omitted.) *State v. Boone*, 2024-Ohio-6116, ¶ 33 (11th Dist.). In exercising its discretion to comply with the purposes and principles of sentencing, the court shall consider the R.C. 2929.12 factors “relating to the seriousness of the conduct [and] . . . the likelihood of the offender’s recidivism.” R.C. 2929.12(A). “A

sentencing court fulfills its duties under R.C. 2929.11 and 2929.12 when it states that it considered them” and “is not required to give any particular weight or emphasis to a given set of circumstances.” *State v. McElroy*, 2023-Ohio-3756, ¶ 9 (11th Dist.); *State v. DelManzo*, 2008-Ohio-5856, ¶ 23 (11th Dist.).

{¶24} The court indicated during the hearing and in the sentencing entry that it considered the purposes and principles under R.C. 2929.11. While it did not explicitly state that it considered the R.C. 2929.12 factors, however, “we presume the court considered these factors in the absence of an affirmative showing to the contrary.” *State v. Tyes*, 2026-Ohio-973, ¶ 20 (11th Dist.), citing *State v. Claar*, 2021-Ohio-2180, ¶ 11 (11th Dist.). We do not find Cunningham demonstrated that the trial court failed in its duty to consider all the required factors under R.C. 2929.12.

{¶25} Further, “[t]his court has consistently applied *State v. Jones*, 2020-Ohio-6729 which holds: ‘Nothing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12.’” *Tyes* at ¶ 15; *Hall*, 2025-Ohio-5281, at ¶ 24 (11th Dist.). We will not second-guess the trial court’s weighing of the sentencing factors.

{¶26} The second assignment of error is without merit.

{¶27} For the foregoing reasons, Cunningham’s aggregate sentence of two years for Nonsupport of Dependents is affirmed. Costs to be taxed against appellant.

MATT LYNCH, P.J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the Opinion of this court, the assignments of error are without merit. The order of this court is that the judgment of the Portage County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.

JUDGE SCOTT LYNCH

PRESIDING JUDGE MATT LYNCH,
concur

JUDGE ROBERT J. PATTON,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.